

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

*In re Dealer Management Systems Antitrust
Litigation, MDL 2817*

No. 1:18-CV-864

This document relates to:

*Authenticom, Inc. v. CDK Global, LLC et al.,
Case No. 1:18-cv-00868 (N.D. Ill.)*

Hon. Robert M. Dow, Jr.

Magistrate Judge Jeffrey T. Gilbert

**DEFENDANTS' MOTION TO COMPEL NON-PARTIES PURPORTEDLY
REPRESENTED BY KELLOGG HANSEN TO RESPOND AND
PRODUCE DOCUMENTS PURSUANT TO SUBPOENA**

Defendants CDK Global, LLC (“CDK”) and The Reynolds and Reynolds Company (“Reynolds”) (collectively, “Defendants”), respectfully move this Court for an Order pursuant to Fed. R. Civ. P. 45 and 26 (1) directing the law firm Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C. (“Kellogg Hansen”) to confirm whether it represents non-party subpoena recipients Generating Dealer Traffic, LLC d/b/a/ Open Recalls (“Open Recalls”) and Ghaben Auto Group, LLC (“Ghaben”); and (2) directing Open Recalls and Ghaben to produce documents in their possession, custody, and control that are responsive to the subpoenas. In support of this motion, Defendants submit the accompanying memorandum of law (“Mem.”) and exhibits.

Pursuant to Local Rule 37.2, Defendants certify that they have met their obligation to meet-and-confer in good faith regarding the issues raised in this motion, as follows:

1. The parties exchanged letters addressing the Open Recalls and Ghaben subpoenas on May 8, 2018, and May 15, 2018. *See* Mem. at 3-4; Ex. 5; Ex. 1.
2. Over the course of May 18, 21, and 22, 2018, Defendants met and conferred telephonically with Plaintiffs on several discovery-related issues, including responses by non-

parties Generating Dealer Traffic, LLC d/b/a Open Recalls (“Open Recalls”) and Ghaben Auto Group, LLC (“Ghaben”) to two subpoenas that Defendants served in the *Authenticom* action. Among those who attended those telephonic meet-and-confers were Britt Miller, on behalf of CDK, Brian Ross, on behalf of The Reynolds and Reynolds Company, and Mike Nemelka, on behalf of Authenticom, Inc. (“Authenticom”) and certain other Plaintiffs in the MDL. During that meet-and-confer, counsel for Authenticom stated that they would let Defendants know whether Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C. (“Kellogg Hansen”) still represented Open Recalls and Ghaben in connection with the subpoenas, and that they were not in a position to engage with Defendants about the subpoenas in the meantime. Counsel also asked Defendants not to contact Open Recalls or Ghaben directly in connection with the subpoenas until he confirmed whether Kellogg Hansen still represented them. *See* Ex. 2 (7/27/2018 Email from M. Provance).

3. On July 27 and July 30, 2018, Defendants asked Kellogg Hansen to confirm whether it continues to represent Open Recalls and Ghaben, and to meet-and-confer regarding the subpoenas. Ex. 2 (7/27/2018 and 7/30/2018 Emails from M. Provance).

4. On November 16, 2018, Defendants again asked Kellogg Hansen to confirm that it continues to represent Open Recalls and Ghaben and to discuss the subpoenas during a meet-and-confer scheduled for November 19. *See* Ex. 8 (11/16/2018 Email from M. Provance). Kellogg Hansen responded that it was not prepared to discuss the subpoenas because Defendants had “not raised them for several months.” *Id.* (11/16/2018 Email from M. Nemelka). On November 29, Defendants followed up again to attempt to discuss the subpoenas during a meet-and-confer scheduled for the following day (November 30), noting that Kellogg Hansen had made no effort to engage with them concerning the subpoenas and *still* had not confirmed

whether they continue to represent Open Recalls and Ghaben. *Id.* (11/29/2018 Email from M. Provance). During the meet-and-confer, Kellogg Hansen did not agree to produce any documents that are responsive to the subpoenas, nor could it definitively answer whether firm continues to represent Open Recalls and Ghaben. *Id.* (11/30/2018 Email from M. Provance).

Dated: November 30, 2018

Respectfully submitted,

/s/ Aundrea K. Gulley

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CERTIFICATE OF SERVICE

I, Matthew D. Provance, an attorney, hereby certify that on November 30, 2018, I caused a true and correct copy of the foregoing **DEFENDANTS' MOTION TO COMPEL NON-PARTIES PURPORTEDLY REPRESENTED BY KELLOGG HANSEN TO RESPOND AND PRODUCE DOCUMENTS PURSUANT TO SUBPOENA** to be filed and served electronically via the court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Matthew D. Provance

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